

**REMARKS/ARGUMENTS**

**A. General:**

1. Claims 1 and 23 have been amended to recite that it is body motion that is being monitored and the resulting data processed in order to measure variability; support is found in the specification, paragraphs [0003]-[0007].
2. Claims 1-23 remain in the application.

**B. §101 Rejection:**

This BPAI has rejected claims 1 and 23 under 35 USC 101 as being directed to non-statutory subject matter. More specifically, the BPAI stated that claims 1 and 23 were not limited to tangible practical applications, that is, nothing in either claim limits use of the algorithm to data representing physical objects or real-world process parameters or performance of the algorithm in a real-world use.

Applicant has amended claims 1 and 23 to recite that the health monitor device is used for physiological monitoring of body motion to obtain a measure of variability and it is now clear from the amended claims that the data being gathered and processed relates to body motions, the delta body motion period interval being the measure of variability. Therefore, Applicant submits that claims 1 and 23 are now limited to data representing a physical object, body motion, and recite the real-world use of processing body motion data to obtain a measure of variability in order to monitor health.

Appl. No. 10/687,230  
Amdt. Dated May 25, 2010  
Reply to BPAI decision of March 25, 2010

C. Conclusion:

The rejection of claims 2-22 having been reversed by the BPAI, Applicant respectfully requests that a timely Notice of Allowance be issued in this case for claims 1-23.

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